

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,	)	
Petitioner,	)	
	)	
v.	)	CIVIL ACTION NO. 1:14MC57
	)	
JEFFREY D. HAYES,	)	
Respondent.	)	

ORDER AND RECOMMENDATION OF UNITED STATES MAGISTRATE  
JUDGE ON PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS

This matter came before the Court on February 23, 2015, on the Petition of the United States of America, on behalf of the Internal Revenue Service, under the authority of 26 U.S.C. §§ 7402(b) and 7604(a), to judicially enforce an Internal Revenue Summons.

Joan B. Binkley, Assistant United States Attorney, and Revenue Officer Cynthia D. Cooke appeared on behalf of the Petitioner, United States of America. Respondent Jeffrey D. Hayes appeared with his counsel of record, Mark E. Randolph.

The United States tendered the Declaration of Revenue Officer Cynthia D. Cooke who is a Revenue Officer of the Internal Revenue Service, employed in the Small Business/Self-Employed Division of the Internal Revenue Service located in Winston-Salem, North Carolina, and is authorized to issue Internal Revenue Service summonses pursuant to the authority contained in 26 U.S.C. § 7602, and Treasury Regulations, 26 C.F.R. § 301.7602-1.

Based on the Declaration, the Court found that the Government made a prima facie showing that:

1) An investigation is being conducted by Revenue Officer Cynthia D. Cooke pursuant to a legitimate purpose; specifically that the summons was issued for the legitimate purpose of investigating the federal income tax liability of Jeffrey D. Hayes for the calendar years ending December 31, 2009, December 31, 2010, December 31, 2011, and December 31, 2012, as set forth in the Declaration of Revenue Officer Cynthia D. Cooke attached to the Petition;

2) The inquiry made is relevant to the legitimate purpose;

3) The information sought is not already within the IRS's possession and the Respondent, Jeffrey D. Hayes, is believed to be in possession and control of testimony and documents concerning the above-described investigation; and

4) The administrative steps required by the Code have been followed. See United States v. Powell, 379 U.S. 48, 57-58 (1964); Alphin v. United States, 809 F.2d 236, 238 (4th Cir.1987).

The United States Marshals Service served Jeffrey D. Hayes with a copy of the Petition on November 4, 2014, by serving his Attorney Mark Randolph. The Respondent did not file or serve a written response to the Petition nor did he make any motions in response. At the hearing, Respondent Hayes and his Attorney Mark Randolph appeared and did not object to the entry of an Order and Recommendation requiring Mr. Hayes to

appear and produce for examination all documents and records he possesses or controls related to the income he received for the years 2009, 2010, 2011, and 2012, as provided in the summons.

There is no Department of Justice referral in effect with respect to the Respondent under investigation, as that term is defined in Title 26 U.S.C. § 7602(d).

Based on these determinations, this Court recommends that the Petition by the United States of America be granted and that Respondent Hayes be ordered to appear and produce for examination the books, papers, records or other data as provided in the summons.

IT IS THEREFORE RECOMMENDED that the Petition [Doc. #1] be GRANTED and that an Order be entered compelling Respondent Jeffrey D. Hayes to obey the Internal Revenue Service Summonses served on him on January 28, 2014, by appearing on April 20, 2015, at 9:30 a.m., before Revenue Officer Cynthia D. Cooke, at 1677 Westbrook Plaza Drive Winston-Salem, North Carolina to testify and to produce for examination documents and records as described in the Summons.

IT IS FURTHER ORDERED that the United States Marshal for this District serve a copy of this Order personally upon Jeffrey D. Hayes, within 14 days of the date of this Order.

This, the 2nd day of March, 2015.

/s/ L. Patrick Auld  
UNITED STATES MAGISTRATE JUDGE